UNITED STATES SMALL BUSINESS ADMINISTRATION

Lincoln, NE

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PROCEEDINGS

[START TAPE 1 SIDE A]

MR. GLENN DAVIS: And then one of the things we all have, those who are in business who are in [background noise] with the Department of Labor, mainly because, uh, business does not function without labor; labor does not function without business except in few, rare cases, and one of the persons representing them today is Dominick Smith with the U.S. Department of Labor. Stand up, Dominick. And one of our colleagues, let's say cohort, seen as aiding and abetting those of us who do wrong, but it's Judy Prestence [phonetic], and Judy, with the U.S. Department of Labor, she's with the Employment Standards Administration, and the Wage and Hour Division, and I guess it's from her division so many questions come these days. And then another young man that I think we all should know, I always kind of worry about the term Enforcement Investigation [unintelligible], but he's the opposite of that, and his name is Larry Ischy [phonetic] with the U.S. Department of Agriculture, Larry? There you are. And, I think, seated close by him is the young man whose last name I'm most interested in. My hobby is origin of names, and I'm not sure that he really has a name, but his last name is Cumpost [phonetic] instead of Compost, but he's also with the Department of Agriculture, and the Food Safety Division. Stand up, Larry. [inaudible]. And someone I dare not, I'd be remiss if I did not acknowledge, is a person who has helped us to find a space for the [unintelligible] things, and has done so for many years [background noise] since 1990, one of our strongest supporters, and one of our strongest supporters for Small Business Administration, Mr. Cliff Mosteller. Cliff, you deserve all the [unintelligible] you get because you've done the work, and we appreciate it.

[applause]

MR. GLENN DAVIS: And then there are several others of my colleagues with the SBA that I should mention, and don't hesitate to raise a hand or lift a foot or whatever they choose to do, but, uh, my friend and colleague, David Wilson, uh, David is an Administrative District Director back there, Kathy Piper, and the young man back there, I'm not even going to call his name because everybody knows him anyway, Dean Cotton from Kansas City, Deputy Regional Administrator, and, uh, someone who is hiding up here is our Regional Administrator, uh, dare I say his name, uh, I better go with his commissioned name, Sam C. Jones. I wanted to call him Carter, but I thought he might be offended, and then my colleague, also, uh, Gregg Stratman, who is our Chief Council in the Omaha District Office, and, of course, you just met Larry, I mean, Mike, and Mike has done a great job.

MALE VOICE: Wendell.

MR. GLENN DAVIS: I can't see.

MALE VOICE: You'd better say something about Wendell or he'll be offended.

MR. GLENN DAVIS: I don't see Wendell. I'm supposed to hear Wendell, not see him.

MALE VOICE: He's standing now.

[laughter]

MR. GLENN DAVIS: Incidentally, I'm really taking more time than I should, but Wendell and I have a friendship that goes back as long as he is old, and therefore a little bit younger than I am, and when he served in Congress [inaudible] work with Wendell, and I would say that the Small Business Administration is extremely fortunate to have a man of his quality and intellect as a regional advocate for the legal segment of the Small Business Administration. Thank you, everybody, and I'm glad you came. Oops, I didn't mention Carolyn [inaudible].

CAROLYN: I'm from the Environmental Protection Agency in the Regional office.

MR. GLENN DAVIS: You just [unintelligible]. Three in a row here. Where are the forms? We don't have any. Oh, there's the forms right there. Thank you.

MR. SAM JONES: Good afternoon. As Glenn had mentioned, I'm Sam Jones. I'm the Regional Administrator for the U.S. Small Business Administration. My office is in Kansas City. Uh, I don't want to steal any of Glenn's thunder, but in addition to the things you see here, and hear here about the Ombudsman's role in regulatory fairness issues, there are of course the traditional SBA functions of providing capital to small business, providing business counseling, providing you with access to, uh, various resources for operation of your small business. So I would invite you to pick up on your way out, the small business resource guide for Nebraska. This is a marvelous, marvelous resource, and it outlines some of the things that people need to know about as they begin a small business, it discusses national issues, and the key to it is as you get toward the back, it's just page after page after page of resources that are available to you, to which you can be referred either by the SBA office or the Small Business Development Centers, uh, so please take one of those with you, and if you're already in business, and don't need to know how to start a business, the lady down the street may, and, uh, please share it with her.

Another thing I would like to do, is invite you to a party. April 26, and 28, I had to look at that because most of us have to go out there on the 24 for a management meeting. We're having our Small Business

Expo 2005 in Washington, D.C. at the Hilton Hotel on Connecticut Avenue, and you are invited. Why should you go? Well, maybe you have something to sell. Would you like to sell it to the federal government or to a large corporation? This is [unintelligible] opportunity, and we will arrange appointments, not just, you know, put your name on a list; we'll sit you down face to face with the buyer for the Department of Defense or the Department of the Navy or the Department of Housing and Urban Development or a Fortune 500 company like Hewlett Packard. Dial us up on the website, www.sba.gov/expo. Take a look at what we have to offer at our Expo in Washington, later in the month of April. Come on down and join us. We'll probably have, there'll be 3,000 or 4,000 upstairs, so we'll all be among friends, so come, and it'll be a good time.

It is my pleasure this afternoon to introduce Michael Barrera. Michael's a pretty busy guy. He has held over 40 or 45 of these hearings, and this information on his resume, I noticed today, is old, in 40 states, and by the way, if you can think of an excuse to go to Hawaii, please talk to Michael. He wants to go to Hawaii, and hasn't taken it. But Ombudsman's function, and he'll delve into this more, uh, in his PowerPoint presentation, is to help small businesses deal with the enforcement of regulations enacted by the federal government. Now, Wendell Bailey was introduced earlier back here. Wendell is with our office of Advocacy. He is in the Regional office with me. His territory is the same as mine: Missouri, Iowa, Nebraska, and Kansas. Wendell deals with regulatory issues in the pre-enactment stage, and if you can't head them off at the pass with Wendell, and the regulations are enacted, and you have problems with the enforcements, that's when Michael puts on the white hat, and rides in as this here. Now, in his resume, it mentions that the Ombudsman is empowered to receive, substantiate, and report to congress complaints and comments on regulatory [unintelligible] issues. Now where do we fit in that process? This is the receiving process right here. Anything that goes back to Washington substantiates it. You may think that your problem is obscure. Michael may have heard the same problem 45 times in 40 states. It's not obscure, but it adds weight to what he has been able to substantiate and take to Congress.

Michael brings an excellent background to this. Michael is a graduated of Kansas State University, but we forgive small sense. [laughter], and the University of Texas, my gosh, [unintelligible] this guy, uh, law school, and I can tell you purple is his favorite color. Law school didn't make much of an impression. He served on the board of trustees with the Kansas State University Foundation. He is a former President of he Hispanic Chamber of Commerce in Kansas City, was the founder of the Kansas City Hispanic Bar Association, and he has served at various times in other posts in SBA, including the Acting Association of the Administrative Office of Entrepreneurial

Development, as well as the head of the Office of Government Contracting and Business Development. Again, his resume is a little old, because he has just recently been assigned the task of overseeing our [unintelligible] access. All of our loan programs. Everything we do to get money in the hands of small business is now being supervised by Michael Barrera. The good news is he still takes time off from that to come to Lincoln to listen to your input in his role as National Ombudsman. Please join me in welcoming SBA's National Ombudsman, Michael Barrera.

[applause]

MR. MICHAEL BARRERA: I'm so glad to be back in the Midwest. When I left D.C., it's such a different life than it is in the Midwest, and I was driving here from Omaha to Lincoln, and it reminded me so of that drive from Kansas City to Manhattan, because it's the same type of scenery, and, you know, you see some of those silos out there, and it's just great; it brought me back home, and I'm glad to be back, and I do want to say, even though I'm a Kansas State grad, a very proud one, you know, when I was at Kansas State, you guys, we didn't, we hated playing Nebraska. It was going to be a whooping, and I was there in '82, from, I hate to say this, '78-'82, so we never won games. I think I saw maybe two victories the whole four years that I was there, and it has changed for the better, and, um, even though it has had better success against Nebraska, I still, I still [unintelligible], so I am glad to be back in the Midwest, and I'm glad to be here in Lincoln, and hear what your concerns are.

I'm going to get the, get the, uh, PowerPoint keyed up, and before we do, uh, let me ask you all. Has anybody heard what an Ombudsman, have you hear the term Ombudsman before? Okay, lots of people don't know what that is. Basically, what an Ombudsman is, it's a Swedish term, and it's, what an Ombudsman does is he's a neutral liaison between the citizens and the government, and since I'm the small business Ombudsman, I'm the liaison between federal agencies and small businesses, and what we're here for is to hear your concerns that, how they're affecting you personally, and even though they may be affecting you personally at [unintelligible], they may be affecting businesses all across the country. Some of the successes that we'll talk about here in a second, we had a small business testify in Idaho, and this company actually was a lantern maker, and they had an issue with, uh, I believe it was it was STC or something like that, there's so many different agencies, and their comment, uh, really affected the whole industry, and we actually had that agency actually change a practice which affected all those that make lanterns. Like you said, anything you may testify may affect the whole industry. Our force major success. Or the small brew pub in Illinois. What happened is that there was an issue whether or not those employed as brew masters were salaried employees or hourly employees, and they were charging \$7,000

to fix it, and that was just a fine. He testified at a hearing, and the farmer later actually changed the way, they changed the way [unintelligible] wage an hour was a great success, and the Department of Labor was very, very helpful in that, so please, I always call it the Jerry Maguire Effect, please help us to help you, because we can't help you unless we hear from you, so I'm so glad that you're here today.

Go ahead and start the PowerPoint which kind of gives you an idea of what we do. Okay, they're still loading that up.

[off mic comments]

MR. MICHAEL BARRERA: You might want to turn the lights down a little bit so maybe it's easier to see it.

MALE VOICE: Whenever you're ready.

MR. MICHAEL BARRERA: Okay, now with anything that works, it has to have commitment from the top, and one of the things that the President is committed to is to make sure that he knows that as a former small business himself that we've got to get government out of the way. What I've found from small businesses is they don't want government as a partner; they want us out of the way, and one of the ways that we can make it easier for a small business and be sure that we're fair to you, and treat you fairly in the force and regulations, and the President has his commitment. One of the hardest small agendas is to make sure that regulations are done fairly when they're implemented, and when they're actually enforced against small business. It's also important, one of the first things the President did was hire a small business person to lead the SBA, because you have to come from the small business background to know what a small business is going through. His father was the founder of the United States Hispanic Chamber of Commerce. He owned small businesses when he moved to California, so he knows what it is like to be a small business, to have to write, sign your name on the back of that check. That makes a big difference when you're dealing with small businesses, and we've actually changed the agency to be more business oriented, small business oriented. Myself, I actually come from a small business background, and as Ombudsman, we want to be sure that we limit the unfair enforcement actions against you. We want small, we want federal agencies to weigh or reduce, uh, action and fines against small business. In fact, the last two years we've tracked federal agencies, and we've found in the last two years, federal agencies have reduced or waived fines in some four billion dollars the last two years because they want to work with small businesses themselves, okay?

What we do is we have public hearings like this where you can tell us your story. We try to encourage a "help you" versus a "guide you" attitude with federal agencies. We try to act as a trouble shooter between you and the federal agencies, and, I guess, kind of our stick is, we send a report to Congress every year. We actually grade federal

agencies on how they treat you. We grade them on how they attend hearings when there is an issue about them. We grade them on whether or not they have a non retaliation policy against small business. One of the first comments I heard when I first got started is that many small businesses did not want to tell us their story because they were afraid what would happen, so we started these non retaliation policies, and that really has changed the overall culture with Federal Agencies. We can help you if you, basically, pass three tests. You've got to be a small business. We are the SBA. Your comment has to do with the federal regulation. If it has to do with a state regulation, we don't really have the jurisdiction to really get involved with that, and it has to be involved with a federal compliance or enforcement action. This includes repetitive audits or investigations, excess or unfair fines or penalties, confusing paperwork, which is probably one of the biggest problems that small businesses have, non responsiveness from federal employees or threats or retaliation from federal employees.

On our report, we basically summarize what we've heard throughout these hearings that we do each year. We also identify the top regulatory enforcement concerns and best practices. We rate the federal agencies on their timeliness, how they respond to you, the quality of the response, the non retaliation policies they have, compliance assistance. We hear a lot of federal agencies, and they've gotten so much better about this. They said they would have, they has these pamphlets for small business, but they would never send them out, so now we grade them on the compliance assistance that they have, and how they get that to you. We grade them on the hearing participation, whether or not they let you know that you can go to an Ombudsman to assist you, and how they comply with the paperwork [unintelligible]. Here's what you do if you have a comment. You can file it online. It takes no more than a minute and a half to fill this particular form out. You need to provide us, also, though, a written statement explaining what you need, and you've got to cite specific, if you can, what agency are you dealing with? What's your particular situation? If there's names, please give us that, and what you're seeking. You can file, you can file three different ways. You can keep it totally confidential. However, if you keep it totally confidential, and we can't send your name to the agency, if we can't send your name to the agency, they're not going to be able to help you specifically. Or you can also divulge your name to us, and just the agency, when we can send that directly to them or you can divulge it to us, and publicly, A couple of hints, file a written comment like we discussed, allow full disclosure so they can give your name to the agency, and give as many specific details as you can, and again, tell us the result that you're seeking. This is important. Avoid sending us legal briefs or stuff like that. If you're in a litigation, we don't really want to get involved in that, and I'll explain that later, and it's for your benefit. Helpful hints, again, uh, if you have an attorney, and you are in litigation, please consult that attorney because if you're in litigation, and you're going through disclosure, things that you may disclose to us may be discoverable, so talk to your attorney about that.

This is what we cannot do, at least the statutory jurisdiction not to be able to do, we can't necessarily because you file a comment, it's going to necessarily stop, change it, delay that enforcement action. Sometimes it may, but we don't have, quote, unquote, the legal authority to stop that, so if you are going to do something, please continue to work with that federal agency, and get them the information that they have. We don't process comments that don't involve federal agencies. We don't necessarily help you secure a government contract. We're not going to be an advocate for your specific business on behalf of a particular federal contract. We'll work with you if you're going through a difficulty with a federal agency, but specifically being an advocate for you on a specific federal contract, we won't get involved with that, and we don't provide legal assistance or advice.

Regulatory fairness, we have a regulatory fairness board, and, actually, we have one here in Nebraska. Unfortunately, he's in Asia right now. We actually have, we also have a regulatory fairness board member in Kansas City when we've got business to do. We have one in Iowa, and actually, he's doing an event with the White House today, so all my reg fair members are all small businesses like yourself. They're volunteer people that want to get involved, and they're actually our eyes and ears of the federal, for us in their particular areas, so unfortunate none could make it here today, but they are out doing business. If you're ever interested in being a reg fair member, we'll give you information on how you can you do that.

There's our local, Paul Kenyan [phonetic] is our chair in Iowa, and Jeanette Pringer [phonetic] is in, uh, Kansas City. James Zebrick [phonetic] is here in Nebraska. There are just some of the wins that we've had the last couple of years. Again, we've tracked over four billion dollars in waived penalties and reductions of fines. We had one situation where IRS determined reasonable cause in the daily penalties for a small business. A DOD safety inspector tried to close the business down. They got, they testified to us in Ohio, the DCMA actually went and checked that out, resolved the issue, and allowed that business to open back up, and continue doing business with them. Again, the DOL has been very, very helpful with us. The Wage and Hour investigator claimed harassment the owner and employees in Mississippi. DC, the DOL and DC checked it out, and they got it resolved.

Here's some useful websites, and we'll leave this up for you if you, oops, yeah, that's all right, I think you've got to go one more before that. This is a good website, sba.gov. I want to kind of talk about, Sam talked about the different services that the SBA has. We get 1.2 million hits a week on that website, and a lot of people ask,

well, who is going to your website, and I tell them, well, that's your competition because on that website we have information how to start a business, information how to go about hiring people, information how to get ready for loan applications, information how to do government contracting, anything you want about starting a small business is on there. Also, it's also in Spanish now which is called negocios.gov. SBA Ombudsman, that's our website. The [unintelligible], we talked about that, if you ever want information about how or what the stature of business is in Nebraska, you can actually go to that particular website, and if you have regulations you don't like, that maybe, uh, that Congress is considering, go to that website. Forms.gov, any form you want with the federal government, you can actually go to forms.gov. Business.gov, and that's an excellent website because anything about starting a business or doing business with the government is on that particular website. In fact, if you want to find out from compliance assistance how to comply with a particular federal regulation, you can actually go to business.gov, and they'll take you to the next website there, and there's, uh, the one [unintelligible] Nebraska office at the end there.

So, that's kind of the, uh, what we're going to talk about here today. Again, I'm going to call you up individually, and you're going to testify here today. This is a public hearing, so this is, you're not going be able to claim confidentiality on this. If you do feel you want to be confidential, we can talk afterwards. So, with no further adieu, I'm going to call people up. Before I sit down, is there any questions? Well, I'm glad to be back here in the Midwest, and we'll get started.

MR. MICHAEL BARRERA: Okay, the first one will be Robert Campos, and we'll going to start recording as of now.

[off mic comments]

MR. ROBERT CAMPOS: My name is Bob Campos. I am here today as a small business man to make a few comments on the impact of regulation on small business. I appreciate you giving me the opportunity to make comments on this issue. In a global economy, employers are increasingly facing the challenge of dealing with culturally unique workforce with the growing number of Hispanic workers in America, and lawyers are faced with the daunting challenge of protecting workers that include employees who are culturally different from theirs of the United States American workers. We no longer have the luxury of approaching safety and [unintelligible] as if it was an [unintelligible] workforce as with the, uh, one fits all approach.

I started Robert Campos Training Institute because I believed that there was a real need for bilingual training and education that would assist employers in their endeavor in protecting workers, but in two years, few, if any, employers see a need to purchase our services for a variety of reasons. There seems to be a reluctance on the part of

the many employees that understand and see the value in doing more than protecting workers, especially Hispanic workers. I see Hispanic workers coming by the hundreds to work on federally funded jobs. They came as independent contractors. They have, they have, no equipment, they have no tools, they have no safety equipment, and yet they are only humongous job, and their called contractors, so the contractors work them as many hours as they want, and they get a fee, they don't get overtime, they don't pay city tax, state tax, federal tax, and, uh, it's very wide open throughout the whole United States. I believe employers need to view safety as the heart and soul of productivity, not a separate function for production. companies operate under the philosophy that to compete effectively in a marketplace, they must use every worker in the company, leave no one out, and no good idea behind. [background noise] would be [background noise] if it didn't, if it wasn't for the coming, labor forces coming from Mexico and South America to do these skilled labor jobs. Some members of the Home Builder's Association state that it's absolutely pulling the economy of this state alone, that unfortunately is everywhere else in other parts of the country [unintelligible] dispensable.

While the jobs they take tend to pay a decent wage better than certainly fast food restaurants, many Hispanics are finding their jobs doing work that involves high risk. According to the government's statistics, one out of every 19,000 [background noise] Hispanic workers died on the job during 2002 compared to one in 25,340 white workers, and one in 28,643 black workers. Uh, most causes are well known, lack of knowledge about safety and health hazards, the jobs of many immigrants do are new to them, and are not familiar with the hazards of the job. Furthermore, they generally do not know about OSHA or their right to request for inspections, to keep their name secret.

Language barrier, this goes deeper than the inability to speak and understand Spanish. Many migrant workers are illiterate in their own language. Spanish language fact sheets the individuals are teaching do not help in this situation.

Exploitation, immigrant workers are frequently sent down to do the most dangerous jobs in a day. This is too closely, intimidation, this is too close to exploitation. Migrant workers are much less likely to call OSHA assuming that they know about their rights as American citizens. If they feel they are illegal, in addition, often fear the government officials even though they are trying to help. It, uh, employers need to see safety as a valuable tool to being a good business owner. They can begin by thinking about how safety and health fits in their own important management systems in controlling financial production and sales. They should not try to make these things more difficult. We all know that safety pays. Effective management and implementation of workplace and health programs efficiently value the

individuals and companies by reducing the extent of severity and consequentially, of working related injury and illnesses. Workplaces that establish safety and health management systems the reduce the injury and cost by 20 to 40 percent. Businesses spend \$171 billion a year in cost associated with occupational injuries analysis. Expenditure come right out of the company's profits, and comprise much of five percent of the company's total cost.

If the government is to provide more information directly to employees, to employers, employers would like to see, see an easy digestible format that is simple, concise, and user friendly format. A worker of a small employer has the right to work safe in a healthy environment as a larger employer with resources. The challenges, what can the Small Business Administration do to help? Safety and health is a complex issue; however, there can be a comprehensive approach to this issue that involves technology and training. [background noise] a small employer information regarding how they can run a business more profitably and safely, provides small employers with the use of fairly safety health training aids. Other small employers train to train seminars which allow them to utilize their present workforce in providing bilingual training and education. I called some 50 roofers in Omaha out of 135, and all 50 say that they train their own, and there's only a two man shop, but they've got 50 to 100 Hispanics working the roof for them, and they don't, they don't want to train them; they don't want to spend the money, and the Hispanics don't know enough to know about what their rights are. So, their just working, uh, in dangerous jobs, and when they fall of the roof and break their back, the ambulance comes out and asks the contractor who this individual is, and what insurance, and they say they don't know anything about them, he's a subcontractor. I was told that on a golf course, the contractor brought the roofers up, put them on the roof with all their stuff that was up there, took the ladder, put it on his truck and left, and left them on the roof working, and these are, today, in this environment, the fact that we have 150 people working on one job site, federally funded, all the congressman, all the senators, everybody shut their eyes. They didn't do anything about it, and they did not collect any taxes, state taxes or federal taxes. Thank you very much.

MR. MICHAEL BARRERA: I appreciate it. I do know that, uh, on your comment, OSHA has been working with a lot of the Hispanic groups because they do have, uh, I actually met with the head of OSHA, and they're out doing outreach to a lot of Hispanic groups, and business groups, so they can actually help them get to Hispanic workers, you know, and working, working with agencies there in Washington, D.C., like I said, we can only, they can only do so much. I mean, nobody has the resources to reach every single person that may need it, and to a certain extent, that's when we rely on folks like yourself to help us get the information to them, because if you have

every single community in every single part of the country, you know, resources are what they are, and, uh, but I do know that OSHA has come up with some stuff to outreach, and a lot of this stuff is to educate Hispanic workers in Spanish, so, but we need to help with, you know, groups like yourself to really help us get that information to them.

MR. ROBERT CAMPOS: Well, our company now has, uh, modules we're developing, and putting in Spanish, and they're very simple to use for trainee / trainer, and they're very simple, and it's something that I would like to offer to the, uh, to this panel, and to the SBA for, uh, future seminars or we have everything we need to teach and we have the products.

MR. MICHAEL BARRERA: Okay, I appreciate it.

MR. ROBERT CAMPOS: Thank you.

MR. MICHAEL BARRERA: Thank you. We know have Donald Anderson.

MR. DONALD ANDERSON: Good afternoon. My name is Donald Anderson, and I'm with J-D Anderson Construction out of Abner [phonetic], Nebraska. Um, I'm here to speak with you folks about our HUBZone status. Um, I will leave you with a long list of protests, appeals, and burdensome paperwork our firm has exchanged with the SBA HUBZone office since losing our first HUBZone contractor bill. We lost a contract because the SBA rule that our principal office did not meet the standard of a HUBZone firm. This happened as a result of an error in paperwork which we sent the SBA office when the SBA requested we send documentation of who worked in the HUBZone located office, in this case, our construction company based in Abner [phonetic], Nebraska. We failed to give adequate documentation that my wife and I, two of the three employees required to live in a HUBZone, worked 40 or more hours in the principal office. We naively believed that SBA, the agency claiming to work on our behalf of small business concerns would not try to track us down, that at the very least would understand that we worked far in excess of 40 hours per week in our firm's office, regardless of the fact that I also work many hours on the site where we have work going.

Throughout this ordeal, the Nebraska District Office has expressed ongoing concerns, and the opinion that Anderson Construction is a legitimate HUBZone firm. Even though we did not send enough information in the original appeal to prove that appropriate, fulltime equivalence work in the principal office [unintelligible]. We have subsequently proved that two of the three non construction project related employees of Anderson Construction or 50 percent of the employees lived in a HUBZone, that would be me and my wife. Because of the SBA's rigid interpretation and failure to look at actual employees who reside in a HUBZone, our firm has lost thousands of dollars of contract work beyond the original contract that

we lost at 1.5 million dollars. Plus, we have laid off nearly all our employees except for my wife, myself, and the bookkeeper.

Facing financial ruin, we turned to Representative Lee Carey's office, the Republican [unintelligible] in January, and asked for help in resolving this conflict. Despite the fact the firm, our firm, Anderson Construction, has been sent 16 affidavits stating our official business to take place in a HUBZone of Abner [phonetic], Nebraska, a recognized Indian reservation. Ms. McCaulley [phonetic], and Mr. McCail [phonetic] continue to stand by their original decision that the firm does not meet the standard. We responded honestly to every request as being made of us. Despite our best intentions, and the assistance from Lee Terry's office, and the local office of SBA, the HUBZone office kept us hanging on in hope of keeping our certification even though the big contract was taken from us promptly. From September until February 8, 2005, for five months, our firm has been in limbo with the SBA while the SBA sent us letters asking us to tell them one more time why we should not be decertified. Now, after intervention with Mr. Terry's office, the SBA HUBZone office says, sorry, we do not accept your legitimate explanations of conduction your business from a HUBZone. You can reapply in February of 2006.

We are asking the following: the office of the National Ombudsman intervene on our behalf, and ask Mr. McCail [phonetic], and Ms. McCaulley [phonetic] to talk directly with us over this matter, and to reinstate our HUBZone certification before we totally lose our family business, and I've got one more short statement here.

Since August of last year, we have not been informed completely of our status, and we're always left with an opportunity to rectify Mr. McCail's [phonetic] ruling of proposed decertification often waiting 30 to 60 days for a response back. It was our understanding when the first response we sent to the SBA we did not list myself or my wife as employees which was our minor error and to prove our principal office location. We only listed labor type employees as the SBA asked. The reason why we didn't, did not list me or my wife as employees is because it is not necessary as, to list owners as employees on federal payroll reports. Had we known we needed to list myself and my wife, none of this decertification would be going on as it is. As we have stated in the past, we apologize for the little misunderstanding, that, and to have rectified the payroll report and affidavits asked by the SBA All we ask for is to please let us keep our on three occasions. HUBZone status. We've also laid off all our employees, and, uh, we are in the process of filing bankruptcy on a business I worked 18 years to build, over such a minor error. Thank you, gentlemen.

MR. MICHAEL BARRERA: Let me ask you a couple of questions. Uh, so they, you said they decertified you because you couldn't prove the, because a third of the people have to live within a HUBZone in order to be qualified as a HUBZone, so they denied you

because you didn't have the requisite number of people living within the HUBZone?

- MR. DONALD ANDERSON: They actually decertified us, it's my understanding, because we did not prove to them that we had, uh, the minimum hours required by the SBA in the principal office which we certainly do. We just did not state that in our very first response back to the SBA.
- MR. MICHAEL BARRERA: I do know that, uh, how it all got started, there was another company that filed a protest against you is what I understand.

MR. DONALD ANDERSON: Yes, sir.

- MR. MICHAEL BARRERA: Okay, and did the other company, was it just going for the same contract that you were going for? What I can do for this, and I think it's, I don't want to be the one that's going to make false promises to you, but what I will do, is I'll have them look at it again, and I can't guarantee that I can intervene to make sure you get that HUBZone status, but I can have them look at that again. They're right down the hall from me when I go back, so I'll have them look at it again. I will promise you that. I can't promise you that you will be reinstated because I don't know all the facts, but I'll have them at least look at it, tell them that we met eye to eye, and that they should at least look at it again, and there maybe, and again, there may be laws that when certain appeals run out that it cannot do it, I don't know that, but I will have them check into it again.
- MR. DONALD ANDERSON: Okay, I'd surely appreciate that. Um, like I say, we have, um, sent them all the proper information now. They've given us three chances to respond back to them, and with those responses, we've given them all the proper information. This has been, like I say, it's been ongoing for, for quite some time.

MR. MICHAEL BARRERA: Okay.

- MR. DONALD ANDERSON: We're a very honest, hardworking company. We're a very small company, and we've worked, uh, like I say, 18 years just to where we are today, and, uh, for another company to, uh, protest our HUBZone, and take away such a big job for us, um, it's absolutely devastating to us.
- MR. MICHAEL BARRERA: And it may be, again, I'm not defending or not defending is that, you know, when a company protests, and not even taking your situation in, we have to take protests seriously also, because I'm not saying it happened here, but there are some protests that are very legitimate, and people do take advantage of these things, so they do look at it, and they don't get a chance to see you face to face. It would be difficult for us to do that, but I'll have them at least know that you did testify, and I'll have them at least look at it, and see what, if any, they can maybe just look at it again, not

necessarily change anything, but maybe they can at least look at it again.

MR. DONALD ANDERSON: I sure appreciate that.

MR. MICHAEL BARRERA: I'd be more than happy to do that for you.

MR. DONALD ANDERSON: Thank you very much.

MR. MICHAEL BARRERA: And I appreciate you coming.

MR. DONALD ANDERSON: Thank you.

MR. MICHAEL BARRERA: Thank you. We have Joe Moore.

MR. JOE MOORE: Good afternoon. Thank you for the opportunity to speak to you, uh, this afternoon regarding the issues of the TCPA and the DNC. Amerascope Media is a four old year company that started in the basement of my house, and today employs 14 people. Um, we have, since the inception of our company, had to deal with predatory and nuisance and regulatory claims regarding the, uh, above mentioned regulation. Felonious and litigious interference is not limited to the medical industries proclaimed by the Bush administration, but it is actually a condition that inflicts all businesses across the board.

MR. MICHAEL BARRERA: Just for clarification, you mentioned a couple of acts, you gave the acronyms for them, could you...

MR. JOE MOORE: The TCPA is the Telecommunications Protection Act, and the Federal DNC or Do Not Call list.

MR. MICHAEL BARRERA: Okay.

MR. JOE MOORE: These regulations effect business, uh, not only on an operational standpoint, but at a marketing and promotional standpoint, and communications wise. Regulations are levied with a broad brush with no concern for the fallout, and worse yet, bureaucrats, uh, create these regulations in an environment that is adversarial to the business environment. The regulators do no consider the commercial fallout in the value of the goods and services that are provided by these companies that can no longer tell their story. When the regulations become a moving target, this poses an even greater hardship and expense for the businesses, and makes it much more difficult for them to conduct their business on a day to day basis. In the team of consumer protection, regulation continues to trounce on the free enterprise system, crushing the spirit of the small business entrepreneur. The rash of legal and opportunists that have broached the world of business blackmail by purposely distorting the regulations to their benefit by purchasing claims or proposed claims of damage from a

recipients or broadcast facts or a, uh, unsolicited phone call, and claiming that they are the, uh, recipients of the damage, therefore, uh, following through on lawsuits, uh, pursuant to damages. regulations fail to comprehend the cost of this regulation. In Omaha alone, since October of last year, 250 jobs have been lost simply because a company could no longer do telemarketing. The, uh, ironic thing about this, a large company that has the resources simply moves their operations offshore, and, uh, there was a very prominent company in Omaha that saw these regulations coming down, preempted themselves, and now have 21 offshore operations going today. The, uh, fallout from this is the reality that in communications or marketing or promotion, uh, the cost of this activity is eventually passed on to the consumer, and when I can't produce a communication for a fraction of what the going rate is going to direct mail, for example, that cost will eventually get passed down to the consumer. Um, when a company has to recover an \$11,000 fine for making a simple phone call, that cost will be passed down to the consumer. The regulations bring on useless and costly lawsuits, and put businesses out of business. The TCPA, for example, there is a coalition of attorneys, uh, that, uh, as I mentioned before, buy up FAXs for 25 to 50 cents a piece, and turn around and sue companies such as mine for \$1,700. There is profit and fraud motivated in these regulations, and therefore, we object to them strongly.

The, um, content of the, FAX under the TCPA does make a difference, but the, uh, attorneys that are pursuing this business do not adhere to that difference. A public service announcement or press release is a legitimate form of communication. The Boeing Company has a 174 different vendors that they communicate purchase orders and change order requisitions through the use of their FAX machines. They can be sued by getting a FAX to somebody that just connected a brand new FAX number for as much as, the going rate is \$500, but everybody claims \$1,700 on these things, and so they are forced to, uh, keep records of, uh, what they do not FAX, and when they do not FAX, and how often they do FAX, and when they've created the relationship, when the relationship was validated. Boeing has had to put on three fulltime staff members just to maintain their vendor FAX list.

The DNC puts the small businessman or woman in a competitive disadvantage with the large national service providers. For example, there was company in, um, Omaha that, muffler shop that was put out of business because they made one phone call to one person that said they were on the DNC. They were given an \$11,000 fine. They are now out of business, and the four people that worked in the shop are gone, and the, uh, national auto parts stores that continue to market have this competitive advantage that the small business guy lost because he had at one time the ability to pick up the phone, and call his neighborhood customer.

Small businesses today simply can't afford this kind of risk, and regulation in, for the sake of, of consumer protection has damaged the way that, uh, people conduct their business, and, uh, the regulation is not a fixed target. It is a moving target, and for businesses that, uh, try to be responsible to the regulation, and try to maintain compliance with the regulation, find themselves chasing a tail around a circle. Example, the DNC, when it first started, was promised to be a consolidated national resolution or resolve or pool to have the consumer submit their name to a national call list, and at that time, a marketer was given a 90 day grace period. If they bought, if they went marketing outside of their six allowed area codes, the price was \$28 per area code outside of the six, and if they were a national marketer, their cost was \$7,300 to get this list. Today, there are 19 other states or 13 other states, pardon me, that have created their own set of rules, that have opted outside the DNC. The cost of the area code now is \$40 per area code, the grace period has shrunk to 30 days, and the cost of the list now is over \$11,000. All of these costs, again, are going to be passed on in some way, shape, or form to the consumer, and if regulators are under the impression that they're serving the consumer by shutting down an affordable, uh, channel of communication to the customer or to their clients, they are sadly mistaken because this will come back.

The TCPA is largely ineffective. Um, the propose regulation is not practical for business. It damages businesses, and allows attorneys that, uh, have resolved to make their living doing this, levying these lawsuits without justification, without claim, without verification, and without due diligence on behalf of the regulatory intent, and what it was meant to do. Suggestions from our perspective, we consider ourselves to be a responsible company, and we condone regulation, uh, provided that it's responsible, but, uh, as we see it now, there is, um, no purpose is served by having an attorney buy a claim for 25 cents, and alluding that he has been damaged for \$1,700. That's ludicrous. We just abated a claim for, uh, a guy that did the same thing out of Ohio for \$6,800. I just paid off a claim for \$580 for sending a public service announcement for a client.

Number transportability that has been passed by government makes it increasingly impossible for a company like myself that has a very diligent practice in maintaining the proper DNC lists and opt out lists to maintain 100 percent compliance. A person can transfer a call, disconnect a phone number. It used to be where the phone companies would let them sit for six months; today they are reconnected within 72 hours, and if that was a residential phone number, and is now suddenly a, or was a business number, and is now suddenly a residential number, you can see where the pitfalls lie.

MR. MICHAEL BARRERA: Are you kind of wrapping it up here?

MR. JOE MOORE: Yeah.

MR. MICHAEL BARRERA: Okay.

MR. JOE MOORE: Because of the general perception that businesses are fat with cash, uh, legitimacy in the, in the, um, regulation is hard to enforce, and we need to come up with some form of, um, protection for the small businesses so that they are consumed in legal fees, and in legal activities. That's not what they do. That's not what they're in business for, and we seek, uh, coming to the center on this DNC and regulatory issue, and, uh, seek some understanding from a business perspective, and that, uh, we ask for our political participants to get some, uh, will and backbone on this issue, and start standing up for the small business guy.

MR. MICHAEL BARRERA: You know, the comments, we just actually met with the FTC, uh, actually, a couple of weeks ago, and we met with some of the issues you're talking about, and there is a, you know, there is a balance. There's an old saying in D.C. that well intentions, good intentions can sometimes lead to misintended consequences, and this thing is part of that. HIPPA is another example, you know, a lot of people wanted the privacy, but now doctors are having to spend thousands and thousands of dollars to comply with the HIPPA, so these things are something that, you know, the federal regulators do need to know these things, and we were talking about this with the FTC seriously about three weeks ago, and so I'll take your comments back for them, because I think they need to hear more from small businesses about this, because, you know, the reason the Do Not Call started was because people got tired of getting called all the time, and anybody who has got an email right now, that's going to be the next thing. I mean, even the federal agencies now, we're getting spammed like crazy, and some of the things you can't believe that they would send to a federal email address, so it's just, it's happening, and I think people, I think what happens is that people are tired of seeing it, and they want it fixed, and I'm always under the impression that be careful what you ask the federal government to do because they may do it, and so, but it's still good for us to hear these things, and now we're seeing the consequences of what happened, and I'll definitely take your comments back to the people we met with, actually, again, a couple of weeks ago. They get to hear more about it.

MR. JOE MOORE: I'd like to make one more comment.

MR. MICHAEL BARRERA: Okay.

MR. JOE MOORE: Uh, it's always been our position as a company to comply with these; however, we also believe that technology is where this should lie. Uh, you take a look at what Microsoft and AOL are doing. They are relying on technology to resolve this spam issue, for example. We, as a company, have relied on a technology to rely or to resolve our spam issues internally. Technology is a wonderful innovator, and given the, uh, the proper

incentives, uh, the small business entrepreneur will find a way to innovate to create the kind of environment that is intended here, but, uh, the regulation as it is, again, we have a runaway litigious system. Um, it's absolutely hammering small business.

MR. MICHAEL BARRERA: And don't be afraid to contact the local bar association when attorneys do this. I mean, and we've been in, not this situation, but similar types of situation, we had, uh, lawyers in California that were filing lawsuits for anybody just for ADAX, they would just, they would actually send someone with a disability to go to a restaurant that may not be in compliance just so they could sue them, and they sent the same person around to several hundred restaurants or whatever the business is and collect, and what happened is that some of the businesses started, told the lawyer, take me to court, and the lawyer would not show up because he had so many cases, and they started reporting it to the bar association. It doesn't always help, but don't be afraid to use that also, and I'm an attorney, he's an attorney, and the last thing we want to see is a letter from the bar association.

MR. JOE MOORE: Thank you very much.

MR. MICHAEL BARRERA: Thank you, and he's the Judge so he knows, too.

MALE VOICE: You have three lawyers up here, and I'm embarrassed that we have to ask you this question, but, um, is there no requirement that these claims be brought in the name of the real prior de-enact list. For example, let's say the muffler shop call went to Mr. Stratman. Can I, then, through an internet ad or something solicit Mr. Stratman to assign that claim to Sam Jones, and I pursue it in my name and collect?

MR. JOE MOORE: Yes, sir. That's exactly what's going on.

MALE VOICE: Do I collect after some judicial preceding or do I collect just because of the harassment value of it?

MR. JOE MOORE: Um, sometimes in a settlement to, uh, a judicial process, and sometimes in a settlement just to get you off my back.

MALE VOICE: So, in this judicial process, nowhere do I have to allege that I actually received the call?

MR. JOE MOORE: Oh, yeah, it's alleged all the time. I, for example, let me give you a case in point.

MALE VOICE: The call that Mr. Stratman actually received.

MR. JOE MOORE: And he assigns it to you for a quarter, and you file a claim with me saying, I received this FAX or I received this call. You now owe me, in the name of the TCPA \$1,700, even though you, as an attorney, understand that I'm given a mistake, number one, I have to know how, when, and where I sent this information to you, you

must provide that to me. If you fail to provide that to me, you go ahead and file the claim against me in your local court for \$1,700 for willful intent where there's no willful there at all, and then because I don't have the resources to hire an attorney in Ohio, and I don't need claims lodged against my business, I go ahead and say, okay, um, Mr. Attorney, I'll pay you off \$580 just for you to drop this \$1,700 suit.

MALE VOICE: Sounds like wire fraud to me.

MR. JOE MOORE: Happens all the time.

MALE VOICE: Okay.

MR. JOE MOORE: Happens all the time, and I sent President Bush, uh, Senator Hagel [phonetic], Lee Terry, and Tom Osbourne, all of the documentation, uh, associated with these exact claims, and neither one of those offices responded in any way, shape or form that they were either going to look into them, or that they were going to even consider it as a valid issue.

MALE VOICE: Well, I cannot imagine that if I either call or correspond through the mail with Mr. Stratman in pursuit of this scheme that I have not violate a federal statute using either the mail or wire fraud to make a false claim under federal law, so there may be something to look at there.

MR. MICHAEL BARRERA: Thank you, sir.

MR. JOE MOORE: Thank you very much.

MR. MICHAEL BARRERA: Okay. Leon Page. Mr. Page, how are you?

MR. LEON PAGE: I'm Leon Page, and last July I opened a little agriculture store which has very few rules, and no inspection, and during the course of the year, I got several request to have buffalo meat and elk meat, so I went through and found out what I needed, freezers and proper alarms, and, uh, a thermometer, and then I called, well, I got permission from the county, and then I called the inspector, and he came down, and he didn't hardly even look at the freezers, but that's okay, I mean, they were all proper, and I found out that he, uh, also had, uh, overseen for drinks, and I kind of wanted to serve spiced apple cider, and so I asked him about that, and he says, well, you have to put in two sinks, one to wash the utensils, and one to rinse them, okay. Then he proceeded to tell me that I had to put in special sink to wash my vegetables, uh, which would drain into my septic tank because I couldn't put any chlorine or Clorox on the ground. Uh, we pour chlorine or Clorox, as far as I know, weekly, down wells, uh, to, uh, to get bacteria out, and so I'm really at a loss as to why that, uh, should be a rule.

MR. MICHAEL BARRERA: Have you been dealing with, is that the local...?

MR. LEON PAGE: Huh?

MR. MICHAEL BARRERA: Have you been dealing with the local inspectors or the federal inspectors on this?

MR. LEON PAGE: This is, I believe, a federal inspector. He has an area up, he's dairy and food, in charge of dairy and food.

MR. MICHAEL BARRERA: Do you think it's USDA?

MR. LEON PAGE: I think he's a federal.

MR. MICHAEL BARRERA: Okay.

MR. LEON PAGE: Okay, uh, he also said that I had to have a sink especially to wash or to, or for processing. I said, well, I don't really process. Well, he says, you wash your tomatoes. Yeah, I do wash my tomatoes. Well, that's processing. Okay, and, uh, he says, you cut asparagus? Well, yeah, I clean it and dress it up for the customer, you know. It's okay to go out in the field and cut it and leave it dirty, but then you bring it up, and clean it up, and recut the unusable part of it, now it's a processed food. This don't make a whole lot of sense to me when it was legal for me to do this before. It's okay for me to do it before, but now it's not legal. Anyway, the total thing is, uh, putting in the sinks, and getting everything qualified is about between \$1,500 and \$2,000. Well, I opened in July, and I took in about \$4,400 last year, \$1,500 to \$2,000 is a pretty large sum of money for somebody that don't know what this is going to even, whether it's going to amount to anything more, and so I thought, well, I'll come up here, and I'll kind of state my case. There's other things that he come and told me about that I pretty much agree with, but those are the things that I didn't understand, why chlorine dumped on the ground was suddenly illegal, when the put it down the wells.

MR. MICHAEL BARRERA: I'll tell you what could be helpful, if you'd let us know, because it sounds like it could be a state...

MR. LEON PAGE: I'm hard of hearing.

MR. MICHAEL BARRERA: I'm sorry, it could be the state health department, it could be a federal agency, so if you could find out exactly what agency you were working with...

MR. LEON PAGE: Dairy and Food was what it was, Bureau of Dairy and Food.

MR. MICHAEL BARRERA: It sounds more like a state agency then. I would think Nebraska would probably have one, but I can't say for sure.

MR. LEON PAGE: It's for small business, I know that, you know, for licensing small business.

MR. MICHAEL BARRERA: If you could do this for me, if

you could, we will, okay, we'll transcribe this, but if you could maybe get your written testimony, if you could find out for sure who that is to our local office...

MR. LEON PAGE: Well, I can give them that, yeah.

MR. MICHAEL BARRERA: Okay.

MR. LEON PAGE: I wrote a letter, but I didn't put that part of it in there.

MR. MICHAEL BARRERA: Okay.

MR. LEON PAGE: I have a deal of, a sheet of paper that says the violations and stuff on the rack, but I didn't bring it with me, that's the problem there.

MR. MICHAEL BARRERA: That's okay. If you get that to our local office, they'll get that to me, and we'll help research that for you. You know, we do like to say that if we can't get you an answer, we'll try to get you to someone who can, and we'll see if we can help you on that.

MR. LEON PAGE: But they called it something to be like it was possibly due to the EPA, the Clorox and the chlorine, but I don't know why Clorox and chlorine is, like, I say, it's dumped down the wells. Surely, pouring Clorox or chlorine in a gallon of water isn't near as bad as three gallons dumped down a well.

MR. MICHAEL BARRERA: We actually someone raising their hands back there.

MALE VOICE: [inaudible] If you would just give me a call, I'll try to write it down as far as to the Department of Environmental Quality. I don't know if that's DEQ issue or agricultural issue because they get in with the food production, but if you'll call me, and I'll give you my phone number before you take off.

MR. LEON PAGE: Okay.

MR. MICHAEL BARRERA: He's with the state.

MR. LEON PAGE: I'm a worker from the state.

MR. MICHAEL BARRERA: Okay.

MR. LEON PAGE: And that's really about all I have.

MR. MICHAEL BARRERA: I appreciate it, and we actually want to thank the state for coming, because it's always very important that the state shows up, that shows commitment by the state itself to make it easier for small businesses, and I do appreciate you coming, sir. That helps a lot. Thank you. Okay, we have one more person that said they wanted to testify. Yes, sir. Come on up. State your name, if you can, and name your business.

- **MR. REYNALDO CERVANTES:** Okay, did she give you my, my comments? Who is that young lady?
- MR. MICHAEL BARRERA: If you'd like to go ahead and testify.
 - MR. REYNALDO CERVANTES: Kathleen?
 - MR. MICHAEL BARRERA: Piper?
- MR. REYNALDO CERVANTES: Piper. Good afternoon. Um, I've handed a written report or comments to you. My name is Reynaldo Cervantes, and I'm here today as co-owner of the Robert Campos Training Institute, also known as the International OSHA Hispanic Training and Development Center. Uh, our headquarters are at 5600 South 42nd Street, Omaha, Nebraska. As vice president of the Robert Campos Training Institute, I am charged with developing OSHA training materials. The mission of the institute is to assist employers that have an ethically diverse workforce who to provide a safe and helpful environment for their employees.
- MR. MICHAEL BARRERA: Now, just so we're clear, are you going to basically testify to the same thing as Mr. Campos testified about? Okay.
- MR. REYNALDO CERVANTES: Uh, do you have my comments?
 - MR. MICHAEL BARRERA: I have it right here.
- MR. REYNALDO CERVANTES: Okay, you'll see there the first couple of pages are, um, about my background. I just retired from OSHA in 2002.

MR. MICHAEL BARRERA: Federal OSHA?

MR. REYNALDO CERVANTES: Yes, sir, after 25 years with OSHA, and I've now been in business for three years. Uh, I want to take this opportunity to express my appreciation to you for allowing me to give you my views on government regulation and it's impact on small business. I will concentrate on OSHA because of my experience with OSHA, and also because I am part owner of a small business. Uh, many small business owners view OSHA as nothing more than a terrorist organization created to generate revenue for the government. OSHA strikes fear and anger in the hearts of many business owners because they perceive OSHA to be punitive with nothing to offer but bad news. They see thousands of regulations which, in their mind, are too enormous to ever comply with. They can't quite get their hands around what OSHA is looking for. For many small employers, complying with OSHA standards is akin to playing the lottery or shooting at a moving target with very little chance of success, so why try?

What's wrong with OSHA? OSHA is not the problem. Congress

is the problem. When OSHA was created in 1970, Congress did not promulgate a comprehensive safety in house standard. Instead, they promulgated standards that basically deal with the symptoms of a safety problem, and not the reasons for the problem. For example, presently OSHA can site an employer for not guarding the scaffold because there is a standard that, for that violation, but they can't site the employer for the reasons the scaffold was unguarded in the first place. What a safety in house standard would do is compel employers to assess the work environment for the purpose identifying correcting hazards before anyone goes onto the scaffold. What Congress did was leave OSHA to enforce standards which, by themselves, will never structurally correct unsafe conditions in the workplace. To penalize someone without compelling them to correct the reasons for the existence of a violation tends to be punitive instead of constructive.

What are the basic elements, what are the basic elements of a comprehensive safety and health program? Basically, there's five elements. If you're an employer, you should be required to make a complete audit of the work environment to identify actual and potential hazards. You should also be compelled to correct and control the hazards. You should also establish policies and procedures that address the hazards, and you should effectively communicate those policies and procedures to your employees. Here's where the language becomes an issue, also, in terms of effective communication, and finally, you should develop some kind of system of enforcement of both policies. When you combine these elements with the rest of the OSHA standards that we presently have in existence, you have a comprehensive safety and approach to safety and health. Leave them out, and what you have is chaos, which is what we presently have in OSHA regulations.

Do we need OSHA? Yes, we need OSHA because workers are still getting hurt or killed on the job at alarming rates. Even with this flaw, OSHA still has the expertise to address safety and health problems. However, even if OSHA did not have this critical flaw, they simply lack the resources to provide effective services to American small businesses. For example, in 2003, there were approximately 2.3 million small businesses in America. Federal OSHA has approximately 2,000 compliance personnel to carry out their programs. Additionally, small employers who lack the resources to implement these changes usually don't have access to OSHA's limited resources that are presently used under current compliance assistance programs or outreach efforts. There simply are too many small businesses, in the words of someone, we should mend OSHA, and not end OSHA.

How do we know that safety and health management systems are the answer? OSHA has been creative in trying to get employers to implement a safety and health program for the various type agreements. These efforts have been, for the most part, successful. A few examples of OSHA's efforts are their cooperative agreement programs, their informal property settlement agreements, and their [background noise] programs, such as the voluntary protection program. These are all designed to encourage, the emphasis on encourage, employers to use the comprehensive safety and health program approach. They don't have a standard, so the go out and try to entice the employer to some kind of agreement that they should have a comprehensive safety and health program.

What can the Small Business Administration do? As business people, we need to understand how safety and health impacts our overall business plan. Safety is typically viewed as separate and distinct from management and production with its own structure and accountability systems. To treat safety separate from your business plan is faulty with little or no constructive impact. I don't believe that employers intentionally plan to injure or kill their employees. They realize that safety pays, but they also don't want to be at an economic disadvantage if they are required to implement the changes necessary to incorporate a comprehensive safety and health management system within their business plan. To make it fair, small businesses should be provided certain incentives to make these changes. This will also call for fundamental changes in OSHA.

What are my recommendations? Congress should eliminate the first instance sanctions for any existing OSHA standard. That is that no employer under its current, present, uh, standard regulation OSHA, no employer should be penalized for any violation of the OSHA Secondly, Congress should promulgate a comprehensive safety and health standard, and that's what they should cite. They should cite you for the reasons that scaffold is unguarded, and not for the fact that the scaffold is unguarded. When you cite the employer for the reasons, when you make the employer responsible for taking action, positive or proactive action to keep that scaffold from being in violation, that employer will do more for safety and health than the current thousands of standards that we have. Congress should increase the OSHA budget to allow for the increase in inspection and outreach activity necessary to mandate compliance. As Mr. Barrera said, there are not a lot of resources around, but OSHA has very limited or no resources compared to other government agencies. They are nothing compared to the USDA or the EPA or agencies like that. They only have 2,000 compliance officers in the whole world. Congress should provide small business employers with educational grants that would help them comply with a new standard. These grants should be administered by someone other than OSHA, and the could even be administered by the Small Business Administration. Business Administration should create examples of business plans with the safety component within them. Congress should mandate first instance sanctions on the new safety program standard, but only after a certain grace period.

MR. MICHAEL BARRERA: I appreciate your comments, some pretty interesting comments there just on OSHA itself. When I said that there are the resources there, but resources are limited by just the number of federal employees. The way we're going to go right now, to be quite honest with you, government's not meant to get bigger. I mean, right now, as you're seeing, with the way of, the way the budget is going right now, is that we're not going to add a bunch of new people. I just don't think that's going to happen, unless it has something to do with defense or homeland security. Right now, the federal budget, last year was only one percent increased for all domestic, domestic agencies, and that's, next year they're looking at maybe less than one percent increase for domestic agencies because they're trying to cut down spending. I think what most people think about when they think about government, look at the SBA, for example, is that people don't necessarily want bigger government; they want better government, and what's one thing I know that the President is very focused on, as far as OSHA, I know we've been having great conversations with OSHA, and actually, I've met with John Henshaw, and we actually signed a memorandum of understanding with, he's the head of OSHA, signed a memorandum of understanding with him, my office, and the Department of Advocacy, Office of Advocacy to do that outreach. They're actually going to help us get the word about some of the things that Rick can do. It's interesting the things you talked about is that, um, you know, small businesses don't want to see a lot more OSHA enforcement, but, you know, a lot of people would like to see more OSHA enforcement, so it really is a balance, and the balance is that they've got to provide more compliance, assistance out there to help small businesses to come into compliance, and it's an interesting plan you said about maybe when some of the businesses plans that we have is maybe include a, at least have them at least think about whatever their safety aspect of it is. We're getting a lot of different, you know, business is changing so much. I was in Las Vegas giving a speech, and there were some people that suggested we should start having a security component of a business plan, IT security. There's a component, people say we should have, maybe put a component in the business plan about compliance, not just necessarily federal regulation compliance, where if you're an engineer, you've got different types of compliances. You've got state and local compliances, so it will be very difficult for the SBA to think about a business plan that really has everything that could be part of a business plan because we cannot, we cannot be, we cannot go to every single locality, uh, contemplate every single type of, uh, compliance standard that maybe an engineer may have, a lawyer may have, a doctor may have, there's so much out there now. But some of the general things and stuff that we can actually make suggestions about for people to start thinking about that when they put their business plan together.

MR. REYNALDO CERVANTES: Well, you need to read my

comments, I think, they'll give you, you all are lawyers, well, most of you.

MALE VOICE: Mr. Davis is innocent.

MR. MICHAEL BARRERA: He's a journalist.

MALE VOICE: I could make a good story out of you.

MR. REYNALDO CERVANTES: You understand the issue of due diligence, and without due diligence, it's an unfair act, and OSHA, while they have under 17 K in their act, they do speak to the issue of due diligence. The employer is totally, and I believe it's even unconstitutional to be cited by OSHA because they've never extrapolated that, they've never clearly defined what due diligence, but the courts have, and due diligence is manifested in a comprehensive safety and health program. I'm not talking about raising resources. I'm talking about cutting back resources. I'm talking about creating a standard that would eliminate thousands of regulations right now that OSHA has, and concentrate primarily on the due diligence so that you make the playing field fair. If you go out, and you educate the small employer, and say with conviction, and with also precedence, that this is what OSHA means in terms of due diligence, and if you do, if you're reasonably diligent in your efforts to protect your employers, then you'll be held innocent or you will not be held liable for that violated That's what I'm saying is wrong with OSHA, and the condition. comments that you're making go directly to OSHA as it's presently existing, and what small business has done has reduced to OSHA to nothing more than a consultation program. Oh, they're creating all these cooperative agreements that really are not doing anything for safety and health. You still have the same lost work day injury rates, people getting killed on the job, people getting injured on the job as we did before these cooperative agreements were made. advocating that congress step forward, and create a new law, and create a completely different approach to OSHA, and that is to help the small employer, not to punish them, and to continue the laws, without due diligence, it's not fair, it's just profoundly unfair to any business to look and say, here's the answer. It's the 1926 construction standards, here's the answer, it's this big luminous, uh, general industry standard without the boilerplate, without the due diligence. What you have, in my opinion, is an unconstitutional act. I know that's a little bit difficult, and I appreciate the fact that the small business is making an effort through cooperative agreements with OSHA, but if you don't become part of the solution, you're part of the problem even as SBA.

MR. MICHAEL BARRERA: Well, I know some of the things you said, I think OSHA, to be fair, has to work with the different trade associations. I mean, for them to make a law in a vacuum, you'd have the Trade Association say, that's not fair, so I think there's a combination here. I think they do have to work...

- MR. REYNALDO CERVANTES: With all due respect...
- MR. MICHAEL BARRERA: Let me finish, let me finish. They do have to work with some of the trade associations because they know their business best. They have to work with them, and I think you said that even in this is that many small businesses do want to protect their employees. I would say 95, almost 100 percent of them want to protect their employees, it's just how to go about doing it, and I think we all realize that anything run by humans will never be perfect.
- MR. REYNALDO CERVANTES: Well, see, with all due respect, this is something that OSHA's been trying to get through to Congress for 20 years, and why Congress won't promulgate a standard like this is a completely different discussion, but every trade association, every, every professional association regarding safety and health understands the value of a standard, but yet, so the question is, are we willing to make that change that says we're going to change the law as it's written so that it's fair or are we going to keep the present law as it's written which is unfair, and punishing, irrespective of the [unintelligible].
- MR. MICHAEL BARRERA: Who are you punishing? I guess...
 - MR. REYNALDO CERVANTES: The small businessman.
 - MR. MICHAEL BARRERA: Okay.
- MR. REYNALDO CERVANTES: Every time an OSHA compliance officer comes out, and expects that small businessman to comply with the book without providing them with a recipe for a success is unconstitutionally illegal in my mind.
- MR. MICHAEL BARRERA: So, you worked unconstitutionally for 25 years.
- MR. REYNALDO CERVANTES: Absolutely, absolutely. I mean, just because I'm an ex-OSHA employee, in fact, I talk with more credibility because of my experience than anybody else in this room.
- MR. MICHAEL BARRERA: I think the comments you made are definitely worth hearing, but, uh, for me, just sitting here, and I'm not, I'm not a lifelong federal employee.
- MR. REYNALDO CERVANTES: No, but you seem to be at, with all due respect...
- MR. MICHAEL BARRERA: With all due respect, I'm tasked to be very, to be neutral on these things.
- MR. REYNALDO CERVANTES: Well, then be neutral. To me you're being proactive.
- MR. MICHAEL BARRERA: No, I'm trying to respond, and you won't let me respond. I'm trying to be fair also. I'm trying to be

fair to both sides. We're here to advocate on behalf of small businesses, and of the things that we try to do in this office, and the SBA, is to make sure that federal agencies do treat small businesses fairly, and to find out some of the situations that they're having. We just tracked, like I said, we just tracked federal agencies for the last two years. IRS and Department of Labor were the two most active agencies that reduced or waived fines with small businesses. By far, those two together outdid all the other agencies combined, so I think it's fair to hear both sides.

- MR. REYNALDO CERVANTES: Yeah, but I don't think you're hearing what I'm saying.
- MR. MICHAEL BARRERA: I am, but what you're saying is that what OSHA is doing because they go visit a small business, and they may not necessarily inform them of everything, that's unconstitutional for them to go visit that small business. You're right, they should be working with helping that small business comply before they actually fine them. I think we would agree on that that they should help a small business comply before they fine them?
- MR. REYNALDO CERVANTES: No, because they're not in the consultation business, they're in the compliance business.
- **MR. MICHAEL BARRERA:** So, you're saying they should not even try to consult with them?
- **MR. REYNALDO CERVANTES:** They should be allowed to tell the employer what they should do, period.
- MR. MICHAEL BARRERA: But then you're asking for a law that, I mean, just to be fair, there's so many different types of businesses, so many different types of trades, so many different types of industries. There's no way you can write a law that would, hear me out, there's no way you could write a law that would address every single type of industry how to do it. I mean, if your law said, you know, you should go out and write a law, I'm not finished, if you go out and write a law, and say, you should, uh, OSHA, you should write a law or you should, Congress makes the laws. Actually, the agencies make the regulations to support those laws, so Congress would first have to write the law that would address every single industry that's out there, and the law would basically say what you're trying to tell me is that, OSHA, you should promulgate regulations that should tell these businesses how to comply. Now, what if that law if good for this year, and then two years from now, that whole industry changes, so sometimes I think, sometimes I believe that, uh, and I really do believe sometimes, I firmly believe that, and, again, I'm not a bureaucrat; I've only been there three years, is that I believe sometimes when you ask the government to fix every single situation that's out there, you make it worse. Perfect example, when I, I was at a seminar actually in Washington, D.C. with the U.S. Chamber of Commerce. We had small

businesses from all over the country there, and one lady asked me, she said, does the SBA track certain figures on your loan programs? I said I wasn't sure. She goes, well, you should. I said, well, if we don't, I'll check into, but let me ask you a question, ma'am. I said, if we, to get the information that you're asking for, there's a couple of things that will have to happen. One thing that will have to happen is that we can't just ask the people you're asking about, we have to ask every single small business whether or not they're doing this particular thing, and in order to ask, we can't ask them on the phone, we have to create a new paperwork, we have to create some new paperwork to comply with that, so to do that, that just increased that overall application, so when I ask all those people, would you like us to do that? We don't need any additional paperwork. So, I agree that OSHA, and any federal agency should work with every small business to try to help them come into compliance, but I also think that we've got to be careful, and this gentleman was a good example, Mr. Moore, perfect example. know, they tried to fix something for consumers, which is on it's face, a very, very good law. It's trying to protect some people, but because of that, you've had misintended consequences which hurts others. We had another law, we had a law with grocers. They had a law, I think it's the, uh, the Origin Act. Any grocer had to tell you, and some of these small grocers had to label where every single piece of fruit, where it came from. The act was good, the intent was good, but it really increased the paperwork, and the burden on these small grocers that's really killing them. So, I agree with you that the agencies should try to work, but I think, for me, and I may be wrong, I think changing that culture is probably the primary first thing you should do whether than trying to create laws to address every single thing that's out there.

MR. REYNALDO CERVANTES: We're going to respectfully disagree, but I'll tell you this that [unintelligible], um, you cannot be an accountant without universally acceptable accounting principals.

MR. MICHAEL BARRERA: And most of those were come up by the accountants themselves.

MR. REYNALDO CERVANTES: Let me finish. Now, you cannot be, you're trying to say that OSHA cannot be a credible organization because they're advocating to have a set of principles that apply to anybody.

MR. MICHAEL BARRERA: That's not what I said.

MR. REYNALDO CERVANTES: Well, you said that industry is going to change. You said OSHA can't write a law for every industry. Well, accountants don't write a principle for every business. That principle applies across every business, and I'm telling that OSHA principles would apply to every business, and they don't have to change. A safety and health principle applies to everything. It's universal.

MR. MICHAEL BARRERA: Well, a principle, and I agree.

MR. REYNALDO CERVANTES: Well, I don't want to argue. Thank you for allowing me to come here and expressing my beliefs and my attitude towards government regulations. I did not think I was going to come here, and face advocate, not an Ombudsman. Thank you very much.

MALE VOICE: Mr. Cervantes, may I ask you a question?

MR. REYNALDO CERVANTES: Yes.

MALE VOICE: Uh, somewhere in my three and a half years or so at SBA, I picked up a fistful of CDs, that were published by OSHA on how to develop a compliance plan for a small business. Are you familiar with those?

MR. REYNALDO CERVANTES: Yes, sir.

MALE VOICE: What's your opinion of their value?

MR. REYNALDO CERVANTES: They're very good.

MALE VOICE: Okay, I've handed them out at a lot of rotary meetings.

MR. REYNALDO CERVANTES: They're very good.

MALE VOICE: Okay, good.

MR. REYNALDO CERVANTES: But they have no, but they have no....

MALE VOICE: But they're dealing with the world we are living in today.

MR. REYNALDO CERVANTES: Well, but they have no, no value or force of law behind them, and in order to make it fair, it has to be a law.

MALE VOICE: Well, I'm just asking, are they valuable to a small business person? And I'll continue passing them out.

MR. REYNALDO CERVANTES: Thank you very much.

MR. MICHAEL BARRERA: Thank you, sir. Do we have anybody else that would like to testify? We do have some federal agencies. I'm not sure if they, and all those who did testify, if you could give me your written testimony, I would really appreciate that so we could move faster on that, particularly Mr. Anderson, so we can get that, at least have them look at it, because I do want them to look at it for you. But we had some very spirited testimony, and I really appreciate that. This isn't meant to be a smooth process. It is meant to hear honest opinions, and I'm glad that we had that. So, I do want to thank you all for testifying. Mr. Moore, if you'd give me your written testimony, I'd really appreciate that, and I think the important thing is

that, you know, we know that regulations are very, very difficult for small business, whether you're filling out applications to be something, to be certified for something, it's incumbent upon the government to make it as easy as possible. We have to do that, because if we don't take care of small business, they'll go away, and we all know that small businesses right now, they actually employ, 60 to 80 percent of all new net jobs are created by small business. When we talk about some of the large companies like Compaq, Hewlett Packard, Staples, AOL, they all started small. You never know when, and I, almost like a lottery. You never know when that small business hits big, and the ones that benefit from that are the communities that they grow up in because if a small business becomes a big business, they do business with other small They employ a lot of people, the support their businesses. communities, so I think it's critically important that we try to take care of small business as much as possible, and I definitely agree. Small businesses want to do the right thing. I don't find a small business saying, I want to go out and cheat the government, I want to go out and They want to do the right thing, and I think cheat regulators. regulators, and actually those people that work for federal agencies, I have honestly seen a culture change in the last three years. When I first got here, I couldn't get a federal agency to come to the hearings. They would not want to come. They didn't want to listen to it, and many of the small businesses were afraid to testify. That's changed, so it, and one thing you've got to realize about federal government, it's like a big aircraft carrier trying to turn around. You just don't make a quick turn. It's going to take awhile, and it's going to take awhile, and we have to have these type of testimonies, we have to have people that really want to advocate on behalf of small businesses, keep hammering away, hammering away, hammering away, and we've got to keep having hearings like this so we can let people know what's going on because if you don't tell us, we can't change it, so please continue to use my office, use the local SBA, and use us for all our resources, whether it's doing business in government contracting, entrepreneur development, either, just getting a government loan. Those things are out there, and they're there to help you, so please feel free to contact me or your local SBA office. I'm so glad that you guys came out here, and I wish Nebraska a good season. Thanks a lot.

[applause]
[END TAPE 1 SIDE A]